FILE COPY.

Office Supreme Court U. S.
FILED
APR 30 1903
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 534.

W. C. O'NEAL, PLAINTIFF IN ERROR,

vs.

UNITED STATES OF AMERICA,
DEFENDANT IN ERROR.

Writ of Error to the District Court of the United States for the Northern District of Florida.

Brief of WILLIAM A. BLOUNT, Attorney for Plaintiff in Error. On motion to dismiss for want of jurisdiction.

W. A. BLOUNT, PUBLISHER, PENSACOLA, FLA.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 534.

W. C. O'NEAL, PLAINTIFF IN ERROR,

vs.

UNITED STATES OF AMERICA,
DEFENDANT IN ERROR.

Writ of Error to the District Court of the United States for the Northern District of Florida.

Brief of WILLIAM A. BLOUNT, Attorney for Plaintiff in Error. On motion to dismiss for want of jurisdiction.

STATEMENT.

On the 10th day of November, 1902, an affidavit was filed in the court below, charging the plaintiff in error with contempt. A rule issued in accordance with its prayer was served upon the plaintiff in error, and in answer thereto he filed a demurrer hereinafter set forth. The judge overruled the demurrer, and the plaintiff in error, reserving the benefit of it answered. Without formal traverse, trial was had before the court and a judgment rendered finding the defendant guilty of contempt of the court *as charged in the affidavit*, and he was sentenced to imprisonment in the county jail, at Pensacola, Florida, for a term of sixty days. From this judgment he sued out a writ of error to this court under paragraph 2, section 5, act of March 3rd, 1891, establishing circuit courts of appeals, &c.

The demurrer of the plaintiff in error was as follows:

1. That the affidavit of A. Greenhut attached to the rule to show cause does not show that the respondent had com-

mitted any offence of which this court has jurisdiction in this proceeding.

2. That said affidavit does not show that the respondent has done any act punishable by this court as a contempt thereof.

3. That said affidavit does not show the commission by the respondent of any act of contempt against this court.

ARGUMENT.

The motion to dismiss is upon the ground that the "said judgment having been rendered in proceedings in contempt, the said judgment is not reviewable in this honorable court on error."

The brief adds the ground that the jurisdiction of the court below was not in issue.

The questions then are:

1. Is this a proceeding in which this court will review a judgment of a District Court of the United States, punishing as for a contempt?

2. Does a District Court of the United States have jurisdiction to punish as for contempt, an act which is not shown by the proceedings to be one of the acts declared to be contempts by the First Section of the Act of 1831, (Revised Statutes, Section 725)?

I.

We of course admit, that under the uniform decisions of this court a writ of error or appeal under the ordinary appellate jurisdiction of the court, does not lie to review the decision of an inferior court in a contempt case. We contend however, that:

A writ of error lies from the Supreme Court of the United States to a District Court of the United States under paragraph 2, Section 5, Act March 3, 1891, (26 Statutes at Large, page 826,) to review the decision of such lower court that it has jurisdiction of a contempt proceeding brought before it.

The want of jurisdiction in this court to review a class of *cases* arising in the lower court does not prevent the con-

gress from declaring that if a certain class of *questions* arises in a certain class of cases, this court shall have power to review decisions upon that class of questions. and congress has so done in acts too numerous to mention.

That there is no connection between the exercise of its ordinary appellate jurisdiction by this court and its jurisdiction to review special cases under acts of congress so permitting, has been decided under this very paragraph in the cases of:

Nishimura Ekiu vs. U. S. 142 U. S. 651;
In re Lennon, 150 U. S. 393.

And in the decision of an analogous principle in the cases of:

Twitchell vs. Pennsylvania, 17 Wall. 321;
Tinsley vs. Anderson, 171 U. S. 105.

In the first of these cases, the court took jurisdiction of a writ of error to review a *habeas corpus* proceeding although it admitted that it had no right to entertain a writ of error generally to review the decisions of inferior courts in such a matter. The distinction taken was that it had jurisdiction because of the character of the question involved, *i. e.*, "the constitutionality of a law of the United States."

In the second case the court affirmed the doctrine of the first case and applied it to a case in which its appellate jurisdiction in the *habeas corpus* matter was involved upon a certificate of the lower court under the very paragraph involved here. It held, as it had before held, that it had no general appellate jurisdiction over judgments of lower courts in *habeas corpus* proceedings, but that it did have power to review the question of jurisdiction of lower courts when presented in the method provided by the paragraph under consideration. It dismissed the writ of error because the lack of jurisdiction relied upon by appellant was not of the court below in the *habeas corpus* proceeding, but in the proceeding against which relief was sought by *habeas corpus*.

The third case was one arising under the twenty-fifth section of the judiciary act of 1789, (1 Statute at Large, p. 85.)

It was an application for a writ of error to a state court in a criminal case. In criminal cases, confessedly, this court had no general appellate jurisdiction over state courts. It however declared its power to grant the writ in a criminal

case, because there was involved in it one of the special questions embraced within the terms of the twenty-fifth section referred to.

The fourth case embraced both a writ of error and an appeal to review decisions of the Civil Court of Appeals of Texas and of the United States Circuit Court for the Eastern District of Texas, both refusing to interfere with a sentence for contempt imposed by an inferior court of the State of Texas. This court held, that while it would not upon an ordinary writ of error for appeal, review such judgments, yet it would do so when, as in that case, the question to be decided was the existence of a "title, right, privilege, or immunity specially set up and claimed under the constitution or a treaty or statute of the United States" as permitted by the twenty-fifth section mentioned.

The same thing is decided in the following cases in which the court under this paragraph 2, of Section 5, Act March 3, 1891, took jurisdiction on a writ of error of the question of the jurisdiction of the court below, although the question arose in cases over which the court had no ordinary appellate jurisdiction.

Thus, though this court has no jurisdiction, to review a judgment in an ordinary suit at law or equity, yet when the question involved is whether the necessary jurisdictional amount was shown in the court below, this court takes jurisdiction of writs of error raising only that question.

B. & L. Association vs. Price, 169 U. S. 45;
Vance vs. W. A. Vandercook Co. 170 U. S. 468, 472, 481.

And so where the jurisdiction of the court below was in issue upon the question as to whether the necessary averment as to citizenship had been made to give the court jurisdiction.

Powers vs. Chesapeake, etc. 169 U. S. 92;
Blackburn vs. Portland, 175 U. S. 574.

These cases are all alike in holding that though there may be no general appellate jurisdiction in this court over a certain class of cases, yet that the court may have jurisdiction of a certain class of questions involved in these cases, or of the cases themselves, if the certain class of questions be involved therein.

Thus, while this court has no general power to review judgments in criminal cases:

Ex parte Kearney, 7 Wheat, 38–42;
Tinsley vs. Anderson, 171 U. S. 105.

Or judgments in cases of contempt.

Ex parte Kearney, 7 Wheat, 38–42.
New Orleans vs. N. Y. Mail Steamship Co. 20 Wall. 387;
Hayes vs. Fisher, 102 U. S. 121;
In re Chetwood, 165 U. S. 443–462.

Or judgments upon *habeas corpus* proceedings.

Nishimura Ekiu vs. U. S. 142 U. S. 658–9;
In re Lennon, 150 U. S. 393, 399.

Yet, if the jurisdiction of the court below be in issue, this court has the power to review upon such question, alone, the judgment of the lower court, even though it be in a criminal, *habeas corpus*, or contempt case.

So in cases of review by this court of the decisions of state courts under section 25, of the judiciary act of 1789, no matter what may be the character of the case, or whether or not it be ordinarily appellable to this court, if the question involved be one of those specified in that act, then this court has jurisdiction.

We find nothing opposed to this in any of the decided cases of this court. Those which we have cited above and others confirming the principles contained in them, use general language asserting that this court cannot review by an appeal or writ of error a judgment of conviction in a contempt proceeding; yet in no one of them was there raised the question here presented, and in the only ones which construe the general power and the special statutory power (under section 5, Act of March 3, 1891, or section 25, judiciary act of 1789) it is held that the questions specified in such sections can be reviewed, although the cases in which they arise could not be reviewed if such questions were not involved in them.

But if these cases are not decisive, reasoning founded upon decided cases shows our contention to be correct. The reasoning in this:

Paragraph two of section five provides for "any case."
A contempt proceeding is a case, and
The court cannot ignore the plain language of the statute.

The language of this section, so far as it relates to this matter, is:

"Section 5. That appeals or writs of error may be taken from the district court, or from the existing circuit courts direct to the supreme court in the following cases:

"In any case in which the jurisdiction of the court is in issue, in which cases the question of jurisdiction alone shall be certified to the supreme court from the court below for decision."

It remains then only to determine whether a contempt proceeding is a case. That it is, is shown by decisions.

a. That a contempt proceeding constitutes a case.

b. That analogous proceedings constitute cases.

c. By judicial definitions of the word, case.

a. It has been specifically decided that a contempt proceeding is a cause.

In Wisconsin, under a statute permitting the removal of a "cause or matter" from one court to another, a contempt proceeding was held removable.

Laurent vs. Ward, 36 Wis. 558–562.

At circuit it is held that a proceeding to punish for contempt is a "cause" within the meaning of the fee bill, for which a docket fee can be taxed.

Erwin vs. U. S., 37 Fed. Rep., 479.

This ruling was followed in

Goodrich vs. U. S., 42 Fed. Rep., 392-395,

And in

Taylor vs. U. S., 45 Fed. Rep , 531-539.

And it has been held that a judgment against a collector of internal revenue for contempt, is a "civil suit" removable under Section 643, Revised Statutes.

McCullough vs. Large, 20 Fed. Rep., 309-310.

b. Proceedings, analogous in that they are not ordinary suits nor cases at law or equity, are held to be cases.

The following proceedings are so held: A *habeas corpus* proceeding, within the meaning of the law (sec. 25, judiciary act,) providing for a review by this court upon certificate of division of opinion between the judges of the circuit courts.

Ex parte Milligan, 4 Wall, 2.

A proceeding by the interstate commerce commission to compel a witness to testify before that body.

Interstate Commerce Commission vs. Brinson, 154 U. S., 447, 475, 477.

A proceeding to test the sufficiency of an official bond.

Oliver vs. Martin, 36 Ark., 139.

A mandamus proceeding.

U. S. vs. Kendall, 12 Pet., 524.

A proceeding by a creditor to have a debtor adjudged a bankrupt.

In re, Oregon Bulletin, &c., 3 Sawy., 529; 18 Fed. Cases, 780.

A proceeding to bring a Chinese laborer before a United States judge to determine his right to remain in this country.

Fong Yue Ting vs. U. S., 149 U. S., 728.

The following have been held to be suits:

A writ of habeas corpus under section 25, judiciary act of 1789.

Holmes vs. Jennison, 14 Pet., 540, 565, 566, 567.

A writ of prohibition.

Weston vs. Charleston, 2 Pet., 449.

A proceeding for condemnation by the United States under a writ of eminent domain.

Kohl vs. U. S., 91 U. S., 367.

c. These decided cases are in line with judicial definitions of a case or suit.

Thus, a "case" is "a proceeding in court."

Blyew vs. U. S., 13 Wall, 581.

"The modes of proceeding may be various, but if litigated between parties in a court of justice, the proceeding by which the decision of the court is sought is a suit."

Weston vs. Charleston, 2 Pet., 464.

"Whenever the claim or contention of a party takes such a form that the judicial power is capable of acting upon it, then it has become a case or controversy."

Smith vs. Adams, 130 U. S., 173, 174.

"That power (judicial power) is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form permitted by law. It then becomes a case * * *"

Osborne vs. Bank, 9 Wheat, 738-819.

"The primary meaning of the word case, according to the lexicographers, is "cause." When applied to legal proceedings it imports a state of facts which furnishes occasion for the exercise of the jurisdiction of a court of justice."

Kendolf vs. Thalheimer, 12 N. Y., 596.

Speaking of a proceeding before a United States Judge, under the Chinese exclusion act, this court says:

"When in the form permitted by law, the executive officer, acting in behalf of the United States, brings the Chinese laborer before the judge in order that he may be heard and the facts upon which depends his rights to remain in the country be decided, and the case is duly submitted to the judicial power for hearing, there are all the elements of a civil case,—a complainant, a defendant and a judge, actor, *reus et judice*."

Fong Yue Ting vs. U. S. 149 U. S. 728–729.

The word case is regarded in its "legal technical sense as meaning contested cases before courts of justice."

Home Ins. Co. vs. Northwestern Packet Co. 32 Ia. 236.

* * * * * * * *

In the foregoing citations will be found decisions using the words cause, case, and suit. For all legal purposes, however, each of these are synonymous, and hence in point here. The words "case" and "cause" are constantly used as synonymous in statutes and judicial decisions, each meaning a proceeding in court, a suit "or action."

Blyew vs. U. S. 13 Wall. 581;
Kendall vs. U. S. 12 Pet. 645;
And *Authorities Supra*.

A contempt proceeding then being a case, such a proceeding must be held to be covered by this statute.

"The words of the Act of Congress being as explicit as language can furnish, must comprehend every case not completely excepted from them."

Young vs. Bank of Alexandria, 4 Cranch, 384.

This principle of construction has been applied to a case where, like the instant one, the question was as to the construction of the expressions "all final judgements," "any final judgment," and "the final judgment" * * * * * in any case," used in statutes defining the appellate power of this court, and the court has given the fullest effect to the language, saying in one case "there is nothing in the context to narrow the ordinary import of the language. We cannot admit that construction to be a sound one which seeks by remote inferences, to withdraw a case from the

general provisions of the statute which is clearly within its words and perfectly consistent with its intent."

Carter Heirs vs. Cutting, 8 Cranch, 251.
Young vs. Bank of Alexandria, 4 Cranch, 384;
Ormsby vs. Webb, 134 U. S. 47–61.

The statute creates no new jurisdiction in this court, but merely changes the form of resort here, for questions of jurisdiction in the court below in contempt cases have always been reviewable here by *habeas corpus* and are reviewable by *certiorari*.

In re Chetwood, 165 U. S. 462.

2.

Our second position is that:

A District Court of the United States has no jurisdiction to punish for contempt, an act which is not shown by the proceedings to be one of the acts declared to be contempts by the 1st Section of the Act of March 2nd, 1831.

Since in this case, the charge was based upon a formal affidavit and since the judgment was that the defendant was guilty "as charged in the affidavit" the question is:

Did a demurrer on the ground that the affidavit did not show that the respondent had committed any offence of which the court had jurisdiction in the proceeding (such ground being based on the contention that the facts alleged did not constitnte a contempt under the Act of 1831) put in issue the jurisdiction of the court?

The counsel for defendant in error contends it did not, because as he alleges, the court had jurisdiction of the subject matter and of the person and hence the question whether or not the affidavit showed a case of contempt was for the court below to decide, and a judgment rendered in pursuance of the decision would, even if the decision were wrong, be only erroneous, and not void for want of jurisdiction.

The argument is that the court had a right to decide on its own jurisdiction, and having decided that it had jurisdiction, such decision is conclusive except upon appeal or writ of error. Since however, no appeal or writ of error lies to review error in a case of contempt, and since the

question of jurisdiction is foreclosed, as defendant in error alleges, by the decision of the court itself, then a judgment in contempt cases would not be reviewable upon any ground nor in any proceeding, and the District Courts would have absolute power over persons charged before them with contempt. The court has, as we shall show, decided to the contrary many times, and discharged on *habeas corpus*, persons committed for contempt, because the committing court had no jurisdiction, although such court had decided that it did have such jurisdiction.

It has been decided that a court has no jurisdiction over a contempt case in a proceeding commenced by affidavit unless the affidavit states facts which in law constitute a contempt.

Batchelder vs. Moore, 42 Cal. 415;
Wyatt vs. People, 17 Col. 252;
Ex parte Degener, 30 Tex. Crim. App. 566.
See Brown on Jurisdiction, Sec. 3 and .

The mere fact that a court has jurisdiction over contempts does not give it power to punish any act however innocent, as a contempt, merely because it decides it to be so. It can, when the fact alleged constitutes a contempt in law, determine whether such fact is true, but it cannot by its decision render that a contempt which is not so. In other words, not only must it have before it the person charged, and have jurisdiction of contempts, but it must have authority to pronounce judgment in the particular case.

Ex parte Degener, 30 Tex. Crim. App. 566, and authorities cited;
People vs. Liscomb, 60 N. Y. 559;
U. S. vs. Swan. 150 U. S. 648 and Cit.

Particularly is this true in the United States Courts, where a statute defines what shall be contempts thereof, and restricts their authority to punish to the specific acts thus defined.

Ex parte Robinson, 19 Wall. 505–510.

The statute is imperative in its declaration that the "power" shall not be construed to extend, &c., so that by these express terms the court has no jurisdiction except when the facts embraced in the statute exist.

The fancy that the court below had jurisdiction of the subject matter,—contempts,—and of the person,—the plain-

tiff in error,—and that it could by its decision make that a contempt which by the law was not a contempt, in other words that we cannot inquire into its authority to pronounce the particular judgment, is dispelled by many decisions of this court in which the question arose in various forms.

In prohibition cases, which of course involve only jurisdiction:

District Courts have of course general admiralty jurisdiction, and when they have a *res* before them, they would as defendant in error contends, have jurisdiction to determine anything to be cognizable by them in admiralty, and such determination could be reviewable only on error. But in the case of the Resolute, this court says that the jurisdiction in admiralty cases *in rem*, for breach of maritime contracts "pre-supposes first, that the contract sued upon is a maritime contract, and second, that the property proceeded against is within the lawful authority of the court. These are the only requirements necessary to give jurisdiction."

The court proceeded to determine whether there was or not, a maritime contract, and hence a case for the granting or refusing the writ of prohibition.

The Resolute, 168 U. S. 437.

That is, the court decided that it was not sufficient to sustain the jurisdiction of the court that it was an admiralty court and that the court had possession of the *res*, but it must also appear that the particular contract was a maritime contract, and if not, there would be no jurisdiction.

So in suits for maritime torts, the court though a court of general admiralty powers and having custody of the property attached, has no jurisdiction unless the facts show a maritime tort.

Ex parte Gordon, 104 U. S. 515;

This court issued a writ of prohibition to restrain the District Court from proceeding in admiralty to adjudge damages to buildings on land by fire alleged to have been negligently communicated by a vessel. The court was an admiralty court and had the vessel in possession, but the particular tort relied upon was not a maritime tort, and the court was therefore without jurisdiction in the particular case.

Ex parte Phœnix Insurance Co., 118 U. S. 610.

So this court declared that the District Court, though a prize court and having possession of the prize, did not have jurisdiction to entertain in admiralty a suit for damages against a foreign belligerent ship, etc., and awarded a writ of prohibition.

United States vs. Peters, 3 Dall. 121.

In habeas corpus cases which of course involve only jurisdiction:

This court inquired on *habeas corpus* into the question whether the fact upon which the lower court adjudged the contemnor guilty was a contempt in law so as to give the lower court jurisdiction, and decided that it was not, and discharged the prisoner.

Ex parte Fisk, 113 U. S. 723;

See also, *In re* Ayers, 123 U. S. 485–486

This court recognizes, that even when the court has jurisdiction over the person and the cause, "there may be some other matter which will make the proceeding void," and gives as a reason for a discharge even on *habeas corpus*, "matter for which by law no man ought to be punished," and says "the latter part of this rule when applied to imprisonment under conviction and sentence is confined to cases of clear and manifest *want of criminality in the matter charged*, such as in effect to render the proceedings void."

Ex parte Siebold, 100 U. S. 371.

So upon *habeas corpus* a prisoner has been released because of an amendment of the indictment by the prosecuting officer although the lower court, having cognizance of crimes and jurisdiction of the prisoner, had decided otherwise.

Ex parte Bain, 121, U. S. 1.

In cases arising under this very paragraph and section, where only jurisdiction is involved:

This court has held the allegation of value in cases depending on it to be essential to the jurisdiction of the Circuit Court of the United States and has proceeded to determine whether the allegation was sufficient even though the court below had determined it

The court says "the decision of the only question before us depended upon whether the allegations contained in the bill of complaint showed the matter of dispute to have been of sufficient value to give the Circuit Court jurisdiction."

B. & L. Assn. vs. Price, 169 U. S. 45–46;

Vance vs. Vandercook, 170 U. S. 438, 472, 481.

And the same holding is made as to the jurisdictional character of allegations of citizenship.

Blackburn vs. Portland, 175 U. S. 574;
Stuart vs. Easton, 156 U. S. 46;
Denny vs. Pironi, 141 U. S. 121;
Powers vs. Chesapeake, etc. 169 U. S. 92.

In all these cases the court decided that under the statute which we invoke, the jurisdiction of the court below was in issue, and in the absence of allegations bringing the particular case within the terms of the statute conferring power on the court, there was no jurisdiction. In each case, the court had jurisdiction over common law and equity suits, but not of those particular cases, because the allegations in the proceeding—bill or declaration—did not show the existence of a fact which alone made the particular case justiciable by the court * * * * * * * * * *

We submit that a writ of error lies from this court under paragraph 2, Section 5, Act March 3, 1891, to review the question of jurisdiction of the District Court in cases of contempt and that in this particular case the jurisdiction of the court below was in issue.

Respectfully submitted,
W. A. BLOUNT,
Attorney for Plaintiff in Error.

FILE COPY,

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. [illegible]

W. C. O'NEAL,
Plaintiff in Error,
vs.
THE UNITED STATES,
Defendant in Error.

Motion to Dismiss Writ of Error.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1902.

No. 534.

W. C. O'NEAL,
Plaintiff in Error,
vs.
THE UNITED STATES,
Defendant in Error.

In error to the District Court of the United States for the Northern District of Florida.

MOTION TO DISMISS.

On the 9th day of December, 1902, W. C. O'Neal, the plaintiff in error, was adjudged guilty of contempt by the Honorable District Court of the United States in and for the Northern District of Florida, and was sentenced to be imprisoned in the County Jail of Escambia County, at Pensa-

cola, in the State of Florida, for the term of sixty days. On the day that sentence was pronounced, plaintiff in error sued out a writ of error from the said District Court of the United States to this Honorable Court, and the said Court certified to this Honorable Court the question "Did this court (United States District Court) have jurisdiction to try and punish the said defendant for contempt thereof upon the facts and for the causes stated in the said rule and affidavit," and thereupon plaintiff in error was released from custody upon bond.

Defendant in error moves to dismiss the said writ of error upon the ground that the said judgment, having been rendered in proceedings in contempt, the said judgment is not reviewable in this Honorable Court on error.

Notice of this motion has been served on counsel for the plaintiff in error.

BEN C. TUNISON,
Specially appointed counsel for
Defendant in Error.